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SIPDIS

STATE FOR G/TIP, EAP/BCLTV, EAP/RSP, INL/AAE

E.O. 12958: N/A

TAGS: PHUM KWMN KCRM ELAB VM OMIG LABOR TIP

SUBJECT: DAEWOOSA CASE NOT APPROPRIATE FOR 2004 TIP REPORT

REF: A. State 27013; B. State 7869; C. Taylor-Moeling email

4-13-04; D. Hanoi 786; E. Hanoi 336; F. 02 Hanoi 1061

1. (U) Summary: The GVN cracked down hard on the Vietnamese labor companies involved in the Daewoosa case, including jail terms for some executives, who publicly acknowledged their wrongdoing. Since that response to illegal trafficking-related activity in Vietnam, the GVN has reformed its labor export laws further, and enforces them consistently. The Dawoosa case is not relevant to the current situation in Vietnam and should be neither the basis for a "watch list" designation nor mentioned in the report. End summary.

2. (U) In response to ref C, Post conducted further research into the two parastatal labor companies cited in the Kil Soo Lee case, IMS and Travel Company 12. As Department has noted, both are state-owned enterprises. IMS is under the Ministry of Trade, and Travel Company 12 is under the General Department of Tourism. (Note: all labor export companies, state-owned or private, must operate according to Vietnam's Enterprise Law. The "parent" ministries do not have a role in designing strategy or in day-to-day operations. End note.) According to the Ministry of Labor, Invalids, and Social Affairs (MOLISA), IMS continues to operate. Travel Company 12, however, has had its license to operate a labor export business suspended indefinitely. Other businesses of this company still run normally.

3. (U) Ref c stated that abuses perpetrated by the two labor export companies were "condoned and directly facilitated by the GVN." Press reporting and Embassy reporting have noted that individual executives associated with IMS were charged, convicted, and punished for their activities related to the Kil Soo Lee case. IMS' director, Le Cong Tam, received a six-year sentence for his involvement in the case (later reduced to three years on appeal). His chief accountant, Dao Thi Hoai Thu, received a three-sentence. (ref F.) According to contemporary press records, the chief prosecutor of the Hanoi People's Procuracy argued in that case that "IMS did not make adequate efforts to assess Daewoosa and understand the living standards and system in American Samoa before sending 50 workers there. . . a reckless disregard for careful research led to the signing of an unsecured labor contract with Daewoosa." The court, which in Vietnam does not operate truly independently of the government or Party, accepted this argument. The director of TC12, Nguyen Van Khoa, was not charged with a crime but was fired "as a result of the lack of responsibility for taking timely protective actions for the laborers."

4. (U) According to Deputy Director of MOLISA's Department of Overseas Labor Nguyen Ngoc Quynh, the executives of TC12 and IMS were not prosecuted under trafficking legislation because Vietnamese laws on trafficking do not explicitly refer to labor exploitation, but instead focus on trafficking and trading in women and children. Current laws also do not refer to labor export abuse as trafficking in persons, but nonetheless criminalize it. (Note: expanding the definition of trafficking in persons to cover men as well as women and children is a recommendation in the Ministry of Justice's recent assessment of Vietnamese laws relating to TIP, reported in ref D. End note.) Ref E is a discussion of the new Vietnamese labor code, which is clearer (and stricter) than the laws under which the executives from IMS were convicted and the head of TC12 dismissed.

5. (U) Specific changes in the Vietnamese labor code since the Kil Soo Lee case provide more detail on the eligibility conditions for the issuance of labor export licenses. In addition, Circular 22 (providing guidelines on implementation of provisions of the Government's Decree No. 81/2003/ND-CP dated 17 July 2003 on dispatching Vietnamese workers to work abroad) stipulates details on punishment measures for those labor export businesses that violate Decree 81. According to Quynh, this circular is the most detailed document to date on punishment measures. If required, Post can provide a copy of these decrees.

6. (U) Comment: Post hopes that the above information is useful to the Department in assessing the GVN's attitude towards trafficking in persons through labor exploitation

and in the actions it has taken to punish the offenders and curb future abuses. We believe that this case, in which the relevant events occurred in 2000 and 2001, is inappropriate for inclusion in a report that is (per ref B) intended to cover developments from March 2003-March 2004. Far more relevant to Vietnam's performance in the fight against trafficking in persons is the concerted effort the GVN has made during this timeframe to draft, publicize, and implement new legislation and regulations to promote the welfare and protection of its overseas workers and police the system of recruiting and sending them. We note as well that the GVN has made a very strong effort to put the new legislation into action, which is both significant and unusual in a system where implementation usually lags policy.

17. (U) The conditions for Vietnamese workers at the time of the 2004 TIP report's release are not similar to the conditions for exported Vietnamese laborers at the time of the events related to the Daewoosa case. Vietnam's new labor code - which addresses specifically the issue of labor export abuses and which establishes serious penalties for the violation of worker rights or the exploitation of Vietnamese workers, and which has already led to strengthened enforcement of existing regulations and laws with accompanying sanctions and criminal convictions for businesses and individuals, along with major publicity to maximize the deterrent effect - must be considered as a "significant effort" to bring Vietnam into compliance with minimum standards as set out in the TVPRA.

18. (U) Vietnam has a trafficking in persons problem, a developing country's lack of resources, and an inadequate legal code that is currently being reformed. Therefore, post concurs with a recommendation that Vietnam be placed in Tier 2 for the March 2003-March 2004 period. In general, however, post assesses the GVN's efforts to overcome its trafficking problem as significant on a number of different levels. In particular, post believes that the GVN's work on labor reform, specifically the reform of labor export regulations, and its relatively unusual success in implementing and enforcing these regulations, is a notable achievement. The events of 2000-2001 as uncovered in the Daewoosa case concluded in early 2003 are not relevant to Vietnam's current TIP situation, not reflective of the current status of Vietnamese law and practice, and therefore not a reasonable trigger for a "watch list" (or, as described in ref A, a "weak 2") designation. End comment.  
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